

113TH CONGRESS
2D SESSION

H. R. 3875

To amend the Foreign Intelligence Surveillance Act of 1978 to reform the telephone metadata program.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2014

Mr. SCHIFF introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Foreign Intelligence Surveillance Act of 1978 to reform the telephone metadata program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telephone Metadata
5 Reform Act”.

6 **SEC. 2. SEARCHES OF BULK CALLER DATA.**

7 (a) IN GENERAL.—Title V of the Foreign Intelligence
8 Surveillance Act of 1978 (50 U.S.C. 1861 et seq.) is
9 amended—

1 (1) in section 501—

2 (A) in subsection (a)(1), by striking “other
3 items” and inserting “other items, but not in-
4 cluding call data records”; and

5 (B) in subsection (e), by inserting “or sec-
6 tion 502” after “this section”;

7 (2) by redesignating section 502 as section 503;

8 (3) by inserting after section 501 the following
9 new section:

10 **“SEC. 502. ACCESS TO CERTAIN CALL DATA RECORDS FOR**
11 **FOREIGN INTELLIGENCE AND INTER-**
12 **NATIONAL TERRORISM INVESTIGATIONS.**

13 “(a) IN GENERAL.—

14 “(1) APPLICATION.—The Director of the Fed-
15 eral Bureau of Investigation or a designee of the Di-
16 rector (whose rank shall be no lower than Assistant
17 Special Agent in Charge) may make an application
18 for an order directing a telecommunications carrier
19 to search the call data records of such telecommuni-
20 cation carrier using a call data record as the basis
21 of such search and to produce the results of such
22 search in a format specified by the Director or such
23 designee to the Director or such designee not later
24 than 12 hours after being directed to do so. Each
25 application under this paragraph shall—

1 “(A) be made to a judge described in sec-
2 tion 501(b)(1);

3 “(B) specify each telecommunications car-
4 rier that the applicant requests be directed to
5 search call data records and produce the results
6 of such search; and

7 “(C) include a statement of facts showing
8 that there is a reasonable suspicion, based on
9 specific and articulable facts, that the call data
10 record to be used as the basis for the search is
11 associated with a specific foreign terrorist orga-
12 nization, a specific clandestine intelligence ac-
13 tivity, or specific foreign intelligence not con-
14 cerning a United States person.

15 “(2) ORDER.—

16 “(A) REVIEW OF APPLICATION.—Upon an
17 application made pursuant to paragraph (1), if
18 the judge finds that the application meets the
19 requirements of such paragraph, the judge shall
20 enter an ex parte order as requested, or as
21 modified, approving the application.

22 “(B) PRESUMPTION.—In reviewing an ap-
23 plication under subparagraph (A), a judge shall
24 consider a call data record presumptively asso-
25 ciated with a specific foreign terrorist organiza-

1 tion, a specific clandestine intelligence activity,
2 or specific foreign intelligence not concerning a
3 United States person if the applicant shows in
4 the statement of the facts that such call data
5 record pertains to—

6 “(i) a foreign power or an agent of a
7 foreign power;

8 “(ii) the activities of a suspected
9 agent of a foreign power who is the subject
10 of such authorized investigation; or

11 “(iii) an individual in contact with, or
12 known to, a suspected agent of a foreign
13 power who is the subject of such author-
14 ized investigation.

15 “(b) EXIGENT CIRCUMSTANCES.—

16 “(1) EMERGENCY DIRECTIVE.—The Director of
17 the Federal Bureau of Investigation or a designee of
18 the Director (whose rank shall be no lower than As-
19 sistant Special Agent in Charge) may direct a tele-
20 communications carrier to search the call data
21 records of such telecommunication carrier using a
22 call data record as the basis of such search and to
23 produce the results of such search in a format speci-
24 fied by the Director or such designee to the Director

1 or such designee not later than 6 hours after being
2 directed to do so if—

3 “(A) the Director or such designee deter-
4 mines that the records sought are required due
5 to exigent circumstances and that obtaining an
6 order in accordance with subsection (a) would
7 substantially delay an investigation;

8 “(B) the Director or such designee notifies
9 a judge described in section 501(b)(1) not later
10 than 24 hours after the Director or such des-
11 ignee exercises the authority under this sub-
12 section that the Director or such designee exer-
13 cised such authority; and

14 “(C) an application for an order under
15 subsection (a) with respect to the search and
16 production of call data records conducted under
17 such directive is made to such judge as soon as
18 practicable, but not more than 5 days after the
19 date on which the Director or such designee ex-
20 ercises the authority under this subsection.

21 “(2) USE OF INFORMATION.—If an application
22 for an order requiring the search and production of
23 the call data records acquired under an emergency
24 directive issued under paragraph (1) is denied, or in
25 any other case where the search and production of

1 call data records pursuant to a directive issued
2 under paragraph (1) is terminated and no order
3 under this section is issued approving the search and
4 production of such call data records—

5 “(A) such call data records shall be de-
6 stroyed;

7 “(B) any call data records acquired pursu-
8 ant to a subsequent search under subsection (c)
9 based on the call data records obtained under
10 such directive shall be destroyed;

11 “(C) no information obtained or evidence
12 derived from the search and production of call
13 data records under such directive or from such
14 subsequent search shall be received in evidence
15 or otherwise disclosed in any trial, hearing, or
16 other proceeding in or before any court, grand
17 jury, department, office, agency, regulatory
18 body, legislative committee, or other authority
19 of the United States, a State, or political sub-
20 division thereof; and

21 “(D) no information concerning any
22 United States person acquired from such search
23 and production of call records shall subse-
24 quently be used or disclosed in any other man-

1 ner by Federal officers or employees without
2 the consent of such person.

3 “(3) ENFORCEMENT.—

4 “(A) ORDER TO COMPEL.—If a tele-
5 communications carrier fails to comply with a
6 directive issued pursuant to paragraph (1), the
7 Attorney General may file a petition for an
8 order to compel the telecommunications carrier
9 to comply with the directive with a judge de-
10 scribed in section 501(b)(1).

11 “(B) REVIEW.—If a judge considering a
12 petition submitted under subparagraph (A)
13 finds that the directive meets the requirements
14 of this section and is otherwise lawful, the
15 judge shall issue an order requiring the tele-
16 communications carrier to comply with such di-
17 rective.

18 “(C) CONTEMPT OF COURT.—Failure to
19 obey an order issued under this paragraph may
20 be punished by the judge as contempt of court.

21 “(D) PROCESS.—Any process under this
22 paragraph may be served in any judicial district
23 in which the telecommunications carrier may be
24 found.

1 “(c) SUBSEQUENT SEARCH USING RESULTS OF INI-
2 TIAL SEARCH.—The Director of the Federal Bureau of
3 Investigation or a designee of the Director (whose rank
4 shall be no lower than Assistant Special Agent in Charge)
5 may require a telecommunications carrier to conduct a
6 search of the call data records of that telecommunications
7 carrier using the results of a search conducted pursuant
8 to an order under subsection (a) or a directive under sub-
9 section (b) as the basis for the search under this para-
10 graph and to produce the results of such search under this
11 paragraph in a format specified by the Director of such
12 designee to the Director or such designee not later than
13 12 hours after being directed to do so.

14 “(d) NONDISCLOSURE.—

15 “(1) IN GENERAL.—No person shall disclose to
16 any other person that the Federal Bureau of Inves-
17 tigation has sought or obtained call data records
18 pursuant to an order or directive under this section
19 other than to—

20 “(A) those persons to whom disclosure is
21 necessary to comply with such order or such di-
22 rective;

23 “(B) an attorney to obtain legal advice or
24 assistance with respect to the search and pro-

1 duction of call data records in response to such
2 order or such directive; or

3 “(C) other persons as permitted by the Di-
4 rector of the Federal Bureau of Investigation or
5 the designee of the Director.

6 “(2) PERSONS TO WHOM AN ORDER IS DIS-
7 CLOSED.—

8 “(A) APPLICABILITY OF NONDISCLOSURE
9 REQUIREMENT.—A person to whom disclosure
10 is made pursuant to paragraph (1) shall be sub-
11 ject to the nondisclosure requirements applica-
12 ble to a person to whom an order is directed
13 under this section in the same manner as such
14 person.

15 “(B) SHARING OF INFORMATION ON NON-
16 DISCLOSURE REQUIREMENT.—Any person who
17 discloses to a person described in subparagraph
18 (A), (B), or (C) of paragraph (1) that the Fed-
19 eral Bureau of Investigation has sought or ob-
20 tained call data records pursuant to an order
21 under this section shall notify such person of
22 the nondisclosure requirements of this para-
23 graph.

24 “(e) LIMITATION ON RETENTION OF INFORMATION
25 RELATED TO UNITED STATES PERSONS.—The Federal

1 Government may not retain call data records obtained
2 pursuant to an order under subsection (a), a directive
3 under subsection (b), or a subsequent search under sub-
4 section (c) for a period of more than 5 years if such
5 records contain call data records pertaining to, or reason-
6 ably believed to pertain to, a United States person—

7 “(1) unless upon application to a judge de-
8 scribed in section 501(b)(1) showing probable cause
9 that such records are evidence of a crime which has
10 been, is being, or is about to be committed and that
11 is to be retained or disseminated for law enforce-
12 ment purposes and such judge finds such probable
13 cause exists; or

14 “(2) except to the extent any portion of such
15 records is lawfully used as part of a finished intel-
16 ligence product.

17 “(f) COMPENSATION.—The Government shall com-
18 pensate, at the prevailing rate, a telecommunications car-
19 rier for providing call data records under this section.

20 “(g) TECHNICAL ASSISTANCE.—The Government
21 may provide appropriate technical assistance to a tele-
22 communications carrier to allow such telecommunications
23 carrier to comply expeditiously with an order or directive
24 under this section.

1 “(h) REPORT.—The Director of the Federal Bureau
2 of Investigation shall annually submit to Congress and
3 make publicly available a report relating to searches con-
4 ducted pursuant to this section during the immediately
5 preceding year. Such report shall include—

6 “(1) the total number of searches conducted
7 during such year;

8 “(2) the number of searches of United States
9 telephone numbers (or telephone numbers reasonably
10 believed to belong to a United States person) con-
11 ducted during such year;

12 “(3) the total number of phone numbers that
13 resulted from searches conducted during such year;

14 “(4) the number of United States telephone
15 numbers, or telephone numbers reasonably believed
16 to belong to a United States person, that resulted
17 from such searches;

18 “(5) the number of times the Director or a des-
19 ignee of the Director exercised the authority under
20 subsection (b) to issue a directive due to exigent cir-
21 cumstances; and

22 “(6) the number of times a court rejected an
23 application made in accordance with subsection
24 (b)(1)(C) and required the destruction of call data
25 records produced pursuant to subsection (b)(1).

1 “(i) DEFINITIONS.—In this section:

2 “(1) COVERED AUTHORIZED INVESTIGATION.—

3 The term ‘covered authorized investigation’—

4 “(A) means an authorized investigation
5 (other than a threat assessment) conducted to
6 obtain foreign intelligence information not con-
7 cerning a United States person or to protect
8 against international terrorism or clandestine
9 intelligence activities, provided that such inves-
10 tigation; and

11 “(B) does not include an investigation of a
12 United States person conducted solely upon the
13 basis of activities protected by the first amend-
14 ment to the Constitution.

15 “(2) TELECOMMUNICATIONS CARRIER.—The
16 term ‘telecommunications carrier’ has the meaning
17 given the term in section 102 of the Communica-
18 tions Assistance for Law Enforcement Act (47
19 U.S.C. 1001).”; and

20 (4) by adding at the end the following new sec-
21 tion:

22 **“SEC. 504. DEFINITIONS.**

23 “In this title:

24 “(1) AGENT OF A FOREIGN POWER; FOREIGN
25 INTELLIGENCE INFORMATION; FOREIGN POWER;

1 INTERNATIONAL TERRORISM.—The terms ‘agent of
2 a foreign power’, ‘foreign intelligence information’,
3 ‘foreign power’, and ‘international terrorism’ have
4 the meanings given such terms in section 101.

5 “(2) CALL DATA RECORD.—The term ‘call data
6 record’ means communications routing information,
7 including an original or terminating telephone num-
8 ber, an International Mobile Subscriber Identity, an
9 International Mobile Station Equipment Identity, a
10 trunk identifier, a telephone calling card number,
11 the time or duration of a call, or original or termi-
12 nating text-message numerical information.”.

13 (b) TABLE OF CONTENTS AMENDMENT.—The table
14 of contents in the first section of the Foreign Intelligence
15 Surveillance Act of 1978 (50 U.S.C. 1801 note) is amend-
16 ed by striking the item relating to section 502 and insert-
17 ing the following new items:

“Sec. 502. Access to certain call data records for foreign intelligence and inter-
national terrorism investigations.

“Sec. 503. Congressional oversight.

“Sec. 504. Definitions.”.

18 (c) EFFECTIVE DATE OF LIMITATION ON ACQUI-
19 SITION OF TELEPHONE METADATA UNDER EXISTING
20 LAW.—Subparagraph (A) of subsection (a)(1) shall take
21 effect on the date that is 180 days after the date of the
22 enactment of this Act.

1 (d) LIMITATION ON SEARCHES OF TELEPHONE
2 METADATA ACQUIRED UNDER EXISTING LAW.—

3 (1) IN GENERAL.—Subject to paragraphs (2)
4 and (3), no person may conduct a search of call data
5 records acquired pursuant to an order under section
6 501 of the Foreign Intelligence Surveillance Act of
7 1978 (50 U.S.C. 1861), as in effect on the day be-
8 fore the effective date described in subsection (c).

9 (2) EXCEPTION.—

10 (A) APPLICATION.—The Director of the
11 Federal Bureau of Investigation may make an
12 application to a judge of the court established
13 by section 103(a) (50 U.S.C. 1803(a)) of such
14 Act to conduct a search of call data records de-
15 scribed in paragraph (1). Such application shall
16 include a statement of facts showing that there
17 is a reasonable suspicion, based on specific and
18 articulable facts, that the call data record to be
19 used as the basis for the search is associated
20 with a specific foreign terrorist organization, a
21 specific clandestine intelligence activity, or spe-
22 cific foreign intelligence not concerning a
23 United States person.

24 (B) REVIEW OF APPLICATION.—Upon an
25 application made pursuant to subparagraph

1 (A), if the judge finds that the application
2 meets the requirements of such subparagraph,
3 the judge shall enter an ex parte order as re-
4 quested, or as modified, approving the applica-
5 tion.

6 (C) PRESUMPTION.—In reviewing an appli-
7 cation under subparagraph (B), a judge shall
8 consider a call data record presumptively asso-
9 ciated with a specific foreign terrorist organiza-
10 tion, a specific clandestine intelligence activity,
11 or specific foreign intelligence not concerning a
12 United States person if the applicant shows in
13 the statement of the facts that such call data
14 record pertains to—

15 (i) a foreign power or an agent of a
16 foreign power;

17 (ii) the activities of a suspected agent
18 of a foreign power who is the subject of
19 such authorized investigation; or

20 (iii) an individual in contact with, or
21 known to, a suspected agent of a foreign
22 power who is the subject of such author-
23 ized investigation.

1 (3) EXPIRATION OF EXCEPTION.—Paragraph
2 (2) shall not apply after the effective date described
3 in subsection (c).

4 (4) CALL DATA RECORD DEFINED.—In this
5 subsection, the term “call data record” has the
6 meaning given the term in section 504 of the For-
7 eign Intelligence Surveillance Act of 1978, as added
8 by subsection (a) of this section.

9 (e) RULE OF CONSTRUCTION.—Nothing in this Act
10 or the amendments made by this Act shall be construed
11 to—

12 (1) require a telecommunications carrier (as de-
13 fined in section 502(f) of the Foreign Intelligence
14 Surveillance Act of 1978, as added by subsection
15 (a)) to maintain call data records (as defined in sec-
16 tion 504 of such Act, as added by subsection (a)) for
17 any specific period of time; or

18 (2) authorize the collection or retention of the
19 content of any telephone call.

○